

No. 9/5/84-6Lab./8239.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/S. Haryana Warehousing Corporation, S.C.O. 8, Sector-17-E, Chandigarh.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 99 of 81

Between

SHRI DHUP SINGH, WORKMAN AND THE MANAGEMENT OF M/S. HARYANA WAREHOUSING CORPORATION, S.C.O. 8, SECTOR-17-E, CHANDIGARH.

Present :

Shri H.R. Vats, A.R. for the workman.
Shri R.D. Jain, L.A. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Dhup Singh and the management of M/s. Haryana Warehousing Corporation, S.C.O. 8, Sector 17-E, Chandigarh, to this Court, for adjudication, —vide Labour Department Gazette Notification No. ID/CHD/54-81/35378 dated 24th July, 1981 :—

Whether the termination of service of Shri Dhup Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. Both the demand notices dated 7th April, 1981 and Claim Statement filed in the Court dated 22nd September, 1981 bristle with frivolous facts. But after going through the same a few facts emerge unchallenged. The workman was appointed as a Godownkeeper with the respondent corporation,—vide letter dated 2nd June, 1977 and he actually joined his duties on 10th June, 1977. For the first time his services were terminated on 30th August, 1978 and he was reinstated, on representation filed by him on 10th November, 1978. Again his services were terminated on 11th February, 1980 and he was again reinstated on 2nd May, 1980. Again his services were terminated on 12th November, 1980 and after protracted parleys and representations with the respondent the respondent corporation issued a *de novo* letter of appointment to the workman on 17th March, 1981 and his appointment was for a period of three months. The workman did not join his duties, because during parleys which took place with the respondent corporation, the workman had been assured of a regular appointment. *Inter alia* the workman alleged that since he was fighting a relentless battle against corruption in the respondent corporation and was exposing misdeeds of its officials and so all they ganged up against him, indulge in harassment of the workman and ultimately relieved him from his duties on 12th November, 1980. On three grounds the workman has challenged his termination being against the provisions of the Industrial Disputes Act, 1947.

3. Two details replies have been filed by the respondent, one to the demand notice and the other to the statement of the claim filed in the Court. The preliminary pleas project are that the claim is barred by limitation, the workman has no *locus-standi* to file this claim, which is not maintainable in the present form and the workman is estopped from file the same by his acts and conduct. He further alleged that a similar demand notice filed by the workman dated 27th December, 1980 was withdrawn by him and that the claimant is not a "workman" as defined in section 2(s) of the Industrial Disputes Act, 1947. Other allegations of harassment of the workman have been denied.

4. On the pleadings of the parties, the following issues were framed on 23rd March, 1982 :—

1. Whether the applicant is estopped from filing the present demand by his own act and conduct? OPM.
2. Whether the applicant is a workman under section 2(s) of the Industrial Disputes Act, 1947? OPW.
3. Whether the termination of service of Shri Dhup Singh was justified and in order ? If not, to what relief is he entitled ?

5. The workman examined MW-1 Shri B.S. Siwach, Factory Manager, respondent corporation posted at Sirsa. The workman examined WW-1 Shri V.K. Chakravarti, dealing assistant of the corporation and himself appeared as WW-2.

Issue No. 2

6. This issue was not pressed during the course of arguments by the learned counsel of the respondent corporation. So it is held that the claimant is a 'workman' as defined in section 2(s) of the Industrial Disputes Act, 1947.

Issue No. 1

7. The learned counsel for the respondent corporation Shri R.D. Jain contended that a similar demand notice filed by the claimant was withdrawn by him as evident from his letter, photo copy of which is Ex. MW-1/6 and so the workman is estopped from raising a fresh demand notice by his own acts and conduct. In my opinion, this contention is not based upon sound reasoning, because there is satisfactory explanation on behalf of the claimant that he was forced to file a fresh demand notice after the respondent corporation backed out of its commitment to reinstate him as a regular employee, because,—*vide* fresh appointment letter copy of which is Ex. MW-1/7, the claimant was appointed as a Godownkeeper for a period of two months only. So, this issue is answered against the respondent.

Issue No. 3

8. There is no gainsaying the fact that the claim filed by the workman is not very clear because from the same, it cannot be made out as to which order of termination is being challenged by him. The last order of termination or to be very precise the order relieving him from his duties is dated 12th November, 1980. There is no denying the fact that initially the workman was appointed as Godownkeeper on 2nd June, 1977, who actually joined on 10th June, 1977. His services were terminated on 30th August, 1978, photo copy of the order is Ex. MW-1/1. He was reinstated on 10th November, 1978,—*vide* order, photo copy of which is Ex. MW-1/3. A perusal of the order of reinstatement makes it clear that the workman was reinstated on a representation filed by him, which was considered by the Chairman of the Corporation and accepted by him. His break in service from 30th August, 1978 to the date of his joining his duties is treated as "leave of the kind due". In the 2nd order of reinstatement, which was again passed on a representation filed by the workman, there is no mention about the period, the workman remained unemployed. It is mentioned in the same that his appointment is only upto 12th August, 1980. The said order is dated 2nd May, 1980, photo copy of the same is Ex. WW-1/2. Instead of terminating his services on 12th August, 1980 the respondent relieved him from his duties for the 3rd time on 12th November, 1980. If the appointment of the workman was for a fixed period i.e. upto 12th August, 1980, under what circumstances he was allowed to continue in employment upto 12th November, 1980, is not on record. 2nd termination of the workman was made on 11th February, 1980 and was reinstated on 2nd May, 1980. In, the order of reinstatement there is no mention about the period for which the workman was not at his job. Whether the same was to be treated without pay or leave of the kind due, there is no mention of the same. The learned counsel for the respondent corporation contended that since the appointment dated 2nd May, 1980 given to the workman was upto 12th August, 1980, and the workman had not completed 240 days of actual work with the respondent corporation, he cannot avail of the provisions of section 25-F of the Industrial Disputes Act, 1947. In my opinion, the contention is absolutely mis-conceived. In 1976 Lab. I. C. 1766 M/s. Hindustan Steel Ltd. V/s. Presiding Officer, Labour Court Orissa and other, their Lordships of the Hon'ble Supreme Court of India have held that termination of service by running out of time stipulated in the contract of service amounts to retrenchment, and non compliance of section 25-F(b) renders the retrenchment illegal. Further more the workman actually joined his duties on 10th June, 1977 with the respondent corporation. He was twice reinstated after his services were terminated and the 3rd letter of appointment was given to him on 17th, March, 1981, for a fixed period of two months only. That is an unfair labour practice adopted by the respondent corporation and the Court cannot put its seal of approval to the same. If the conduct of the workman was reprehensible, he should have been dealt with departmentally. The practice of terminating his service periodically and thereafter reinstating him was most unfair. The workman is an ex-serviceman. Probably he was over enthusiastic in his zeal to expose the corruption rampant in the respondent corporation. I should not pass any comment on the same, because there is no evidence to prove any corrupt practice on the part of any official of the respondent corporation. Suffice it to say that the respondent corporation has been most unfair to the workman, who has been waging protracted battle with the respondent corporation to cling to his service. So, the order dated 12th November, 1980, photo copy of which is Ex. WW-1/4, relieving the workman from his duties is illegal void and so also fresh letter of appointment, copy of which is Ex. MW-1/7 cannot be sustained. The workman is ordered to be reinstated with continuity of service and full back wages. So, this issue goes in favour of the workman. *Inter alia* it can be observed that the cessation of work by the workman for the period after 12th November, 1980 was not due to his fault but because of his illegal termination by the respondent corporation.—

9. In the light of my foregoing discussion, I find the termination of the workman,—*vide* order dated 12th November, 1980 to be illegal and void and in flagrant disregard of the provisions of section 25-F and

as such he is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to costs.

Dated, the 3rd October, 1984.

B. P. JINDAL,

Presiding Officer.,
Labour Court, Rohtak.

Endst. No. 99/81/3483 dated 8th November, 1984.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

The 29th November, 1984

No. 9/5/84-6Lab/8240.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Shankar Textile Mills, 41/4, Bahalgarh Road, Sonapat.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 65 of 1982

Between

SHRI BUDHI RAM YADAV, WORKMAN AND THE MANAGEMENT OF M/S SHANKAR TEXTILE MILLS, 41/4, BAHALGARH ROAD, SONEPAT

Present:—

Shri Bahadur Yadav, A.R. for the workman.
Shri R.C. Sharma, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of Sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Budhi Ram and the management of M/s Shankar Textile Mills, 41/4, Bahalgarh Road, Sonapat, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/SPT/31/82/19740, dated 27th April, 1982 :—

Whether the termination of service of Shri Budhi Ram Yadav was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The claim of the workman is that he was employed with the respondent as a Beam Carrier since 19th August, 1974 on monthly wages of Rs. 300 and that his services were terminated by the respondent unlawfully on 10th March, 1981 without giving any notice or payment of any retrenchment compensation as envisaged under section 25-F of the Industrial Disputes Act, 1947. *Inter alia* it is alleged that the claimant was a active unionist and as such he has been waging a relentless battle for the cause of the workman employed in the textile units at Sonapat and that on 12th December, 1980 a general demand notice was raised by the workmen and given to the respondent without any response.

3. In the reply filed by the respondent, the preliminary pleas projected are that the claimant along with other workmen resorted to and actively instigated others to going in for stay in tool down strike on 31st January, 1981 and thereafter the workman went on strike and also indulged in other violent and illegal activities, though the strike was prohibited by the Government of Haryana on 10th March, 1981 but the workman and many others did not report for duty.

4. Replication filed by the workman, he was controverted the various pleas taken by the respondent.

5. On the pleadings of the parties, the following issues were settled for decision on 25th October, 1982 :—

(1) Whether the reference is bad for reason stated in additional plea para 1 and 2 of written statement ?
If so, to what effect ?

(2) Whether the termination of service of Shri Budhi Ram Yadav was justified and in order ? If not, to what relief is he entitled ?

6. Both the parties were allowed to adduce their evidence. The management examined MW-1 Shri Prahalad Singh, Head Clerk, Office of the Labour-cum-Conciliation Officer, Sonapat and MW-2 one of its proprietor. The workman appeared as his own witness as WW-1.

7. I have heard the learned Authorised Representative of the workman Shri Bahadur Yadav and Shri R.C. Sharma, Authorised Representative of the respondent. My findings on the issues framed are as below :—

8. *Issue No. 1.*—The learned Authorised Representative of the respondent Shri R.C. Sharma frankly conceded that the present reference cannot be held to be bad in law, in view of the preliminary pleas No. 1 and 2 taken by the management. He further agreed that plea No. 2 is a mixed question of law and facts and can be more appropriately disposed of while deciding issue No. 2. So, this issue is answered against the management.

9. *Issue No. 2.*—To prove this issue, the management examined MW-1 Shri Prahalad Singh, Head Clerk, office of the Labour-cum-Conciliation Officer, Sonapat, who produced documents Ex. M-1 to Ex. M-9 from the record of his office. He also placed on record Ex. M-10,—*vide* which the strike resorted to by the workman was prohibited by the Government of Haryana. MW-2 is Shri Suresh Kumar, who stated that the work-force of the respondent resorted to stay-in tool down strike in the month of January 1981 and later on they went on complete strike. The management affixed notices Ex. M-2 to M-8 on the notice board and so Ex. M-11 and further despatched letters Ex. M-12 and Ex. M-13 to the workers by post. He further stated that the workman failed to report for duty, so, his name was struck off from the rolls of workmen from 31st March, 1983. He also stated that in the premises of M/s. Om Weaving Factory, there are other three being run under the name and style of M/s. Jagdish Textile and M/s. Shankar Textile the present respondent.

10. The workman appeared as his own witness as WW-1 and stated that he was employed with the respondent as a Beam Carrier for the last 7 years on, monthly wages of Rs. 300 and that there was workers union in the respondent factory, which raised a demand notice with the respondent in the year 1980 and that the strike was prohibited by the Government of Haryana and thereafter he made efforts to resume his duty but he was not allowed to do so.

11. The learned Authorised Representative for the management Shri R.C. Sharma forcefully contended that since the claimant did not resume his duty after prohibition of strike by the Government of Haryana,—*vide* gazette notification dated 9th March, 1981, the management was justified in terminating the services under the Industrial Employment (Standing Orders) Punjab (Haryana First amendment) Rules, 1959. From the said rules a pointed reference was made to rule 20(1)(k). The said rule contains acts and omissions which shall be taken as mis-conduct. One of the clause is that any workman striking work illegally shall be guilty of mis-conduct. The plea of termination of service of the workman on 31st March, 1981 was taken by the management to prove its point that after the strike was prohibited by the Government of Haryana,—*vide* gazette notification dated 9th March, 1981, the management was justified in terminating the services of the workman on 31st March, 1981 for willful absence and also for mis-conduct as provided in the Standing Orders referred to above. The plea of the management that the workman did not resume his duty after prohibition of strike by the Government of Haryana is a trumped up one, because, in case, the workman would not have been keen to resume his duty, I see no reason for him to raise a demand notice on 13th November, 1981, which he did. So, I am inclined to go with the workman that the management deliberately prevented him from resuming his duty after the strike was prohibited by the Government of Haryana and thereby terminated the services in flagrant disregard of the provisions of section 25-F of the Industrial Disputes Act, 1947. So, I find the termination illegal and void ab initio and not sustainable in the eyes of law and as such the same is set aside and the workman is ordered to be reinstated forthwith with continuity of service and with full back wages. This reference is answered and retruned accordingly. There is no order as to cost.

Dated, the 10th October, 1984.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.

Endst. No. 65/82/3502, dated the 8th November, 1984.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.